



Reprinted
January 27, 2016

HOUSE BILL No. 1136

DIGEST OF HB 1136 (Updated January 26, 2016 4:20 pm - DI 97)

Citations Affected: IC 5-20; IC 27-1; IC 27-7; IC 27-8; IC 27-9; IC 27-13; IC 27-15; IC 35-52.

Synopsis: Insurance matters. Amends the application of the annual audited financial report law to domestic insurers. Specifies that an insurer is not prevented from making available a named driver exclusion in a commercial motor vehicle policy. Provides for suspension of a nonresident insurance producer license and a nonresident public adjuster license if the home state license is not effective in good standing. Specifies certain requirements for a domestic insurer that is part of an insurance holding company system, including requirements related to financial disclosures and activities. Defines and specifies requirements for supervision of an internationally active insurance group, including determination of a supervising regulatory official. Specifies penalties for violations of the insurance holding company system law. Requires certain information to be provided to and submitted to a data base by a closing agent within a certain period following a real estate or mortgage transaction. Amends
(Continued next page)

Effective: July 1, 2016.

Lehman, Carbaugh, Hale, Hamm

January 7, 2016, read first time and referred to Committee on Insurance.
January 21, 2016, amended, reported — Do Pass.
January 26, 2016, read second time, amended, ordered engrossed.

HB 1136—LS 6895/DI 97



Digest Continued

the definition of "good funds" for purposes of the law concerning escrow disbursements by closing agents in real estate transactions. Defines "small employer" for purposes of health insurance plans that are not grandfathered under federal law. Requires health coverage independent review organizations to provide notice of an expedited determination within 72 hours after the grievance or review is filed, rather than 24 hours after the determination is made. Provides for the property and casualty insurance guaranty association to obtain reimbursement for certain payments in connection with large deductible worker's compensation policies. Allows the commissioner, in insurer supervision proceedings, to pursue insurance proceeds for certain acts or omissions of officers and directors of the supervised insurer. Makes conforming amendments.



Reprinted
January 27, 2016

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1136

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-20-1-27, AS AMENDED BY P.L.247-2015,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 27. (a) The home ownership education account
4 within the state general fund is established to support:
5 (1) home ownership education programs established under section
6 4(d) of this chapter;
7 (2) mortgage foreclosure counseling and education programs
8 established under IC 5-20-6-2; and
9 (3) programs conducted by one (1) or a combination of the
10 following to facilitate settlement conferences in residential
11 foreclosure actions under IC 32-30-10.5:
12 (A) The judiciary.
13 (B) Pro bono legal services agencies.
14 (C) Mortgage foreclosure counselors (as defined in
15 IC 32-30-10.5-6).

HB 1136—LS 6895/DI 97



- 1 (D) Other nonprofit entities certified by the authority under
 2 section 4(d) of this chapter.
 3 The account is administered by the authority.
 4 (b) The home ownership education account consists of:
 5 (1) court fees collected under IC 33-37-5-33 (before its expiration
 6 on July 1, 2017);
 7 (2) civil penalties imposed and collected under:
 8 (A) IC 6-1.1-12-43(g)(2)(B); or
 9 (B) ~~IC 27-7-3-15.5(e)~~; **IC 27-7-3-15.5(f)**; and
 10 (3) any civil penalties imposed and collected by a court for a
 11 violation of a court order in a foreclosure action under
 12 IC 32-30-10.5.
 13 (c) The expenses of administering the home ownership education
 14 account shall be paid from money in the account.
 15 (d) The treasurer of state shall invest the money in the home
 16 ownership education account not currently needed to meet the
 17 obligations of the account in the same manner as other public money
 18 may be invested.
 19 SECTION 2. IC 5-20-6-3, AS AMENDED BY P.L.247-2015,
 20 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2016]: Sec. 3. In addition to using money provided for the
 22 program from:
 23 (1) court fees under IC 33-37-5-33 (before its expiration on July
 24 1, 2017);
 25 (2) civil penalties imposed and collected under:
 26 (A) IC 6-1.1-12-43(g)(2)(B); or
 27 (B) ~~IC 27-7-3-15.5(e)~~; **IC 27-7-3-15.5(f)**; and
 28 (3) any civil penalties imposed and collected by a court for a
 29 violation of a court order in a foreclosure action under
 30 IC 32-30-10.5;
 31 the authority may solicit contributions and grants from the private
 32 sector, nonprofit entities, and the federal government to assist in
 33 carrying out the purposes of this chapter.
 34 SECTION 3. IC 27-1-3.5-12.3, AS ADDED BY P.L.146-2015,
 35 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2016]: Sec. 12.3. (a) This section does not apply to a domestic
 37 insurer that meets ~~one (1)~~ of the following requirements:
 38 (1) The domestic insurer has annual direct written and
 39 unaffiliated assumed premiums (including international direct and
 40 assumed premiums and excluding premiums reinsured with the
 41 Federal Crop Insurance Corporation and Federal Flood Program)
 42 of less than five hundred million dollars (\$500,000,000).



(2) If the domestic insurer is a member of a group of insurers, ~~that~~
the group has annual direct written and unaffiliated assumed
 premiums (including international direct and assumed premiums
 and excluding premiums reinsured with the Federal Crop
 Insurance Corporation and Federal Flood Program) of less than
 one billion dollars (\$1,000,000,000).

A domestic insurer or group of insurers described in this subsection
 shall comply with the requirements of this section not later than one (1)
 year after the year in which the domestic insurer's or group's annual
 direct written and unaffiliated assumed premiums described in
 subdivisions (1) and (2) exceed the applicable maximum amount
 specified in subdivision (1) or (2).

(b) A domestic insurer shall establish an internal audit function to:

(1) provide independent, objective, and reasonable assurance to
 the domestic insurer's audit committee and management
 concerning the domestic insurer's governance, risk management,
 and internal controls;

(2) perform general and specific audits, reviews, and tests; and

(3) use other techniques considered necessary to protect assets,
 evaluate control effectiveness and efficiency, and evaluate
 compliance with policies and regulations.

(c) An internal audit function established under subsection (b) must
 be organizationally independent, as follows:

(1) Ultimate judgment concerning audit matters must be made by
 the department responsible for the internal audit function.

(2) The department responsible for the internal audit function
 shall appoint an individual:

(A) to be responsible for the internal audit function; and

(B) to have direct and unrestricted access to the board of
 directors of the domestic insurer.

The internal audit function's organizational independence does not
 preclude dual reporting relationships.

(d) The director of the internal audit function shall report to the
 audit committee of a domestic insurer on a regular basis, at least
 annually, concerning the following:

(1) The internal audit function's periodic audit plan.

(2) Factors that may adversely affect the internal audit function's
 independence or effectiveness.

(3) Material findings from completed audits.

(4) The appropriateness of corrective actions implemented by
 management as a result of audit findings.

(e) If a domestic insurer is a member of an insurance holding



company system or a member of a group of insurers, the domestic insurer may satisfy the internal audit function requirements of this section at the ultimate controlling person level, an intermediate holding company level, or an individual legal entity level.

SECTION 4. IC 27-1-13-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) No policy of insurance against:

(1) a:

(A) loss or damage resulting from accident to; or

(B) death or injury suffered by;

an employee or other person or persons and for which the person or persons insured are liable; or ~~against~~

(2) a loss or damage to property resulting from collision with any moving or stationary object and for which loss or damage the person or persons insured ~~is~~ **are** liable;

shall be issued or delivered in this state by any domestic or foreign corporation, insurance underwriters, association, or other insurer authorized to do business in this state, unless ~~there shall be contained within such the requirements of subsection (b) are met.~~

(b) A policy described in subsection (a) must contain the following:

(1) A provision that:

(A) the insolvency or bankruptcy of the person or persons insured shall not release the insurance carrier from the payment of damages for injury sustained or loss occasioned during the life of ~~such the~~ policy; and ~~stating that in case~~

(B) if execution against the insured is returned unsatisfied in an action brought by the injured person or his or her personal representative in case death resulted from the accident because of ~~such~~ insolvency or bankruptcy **described in clause (A)** then an action may be maintained by the injured person, or his or her personal representative, against ~~such the~~ domestic or foreign corporation, insurance underwriters, association or other insurer under the terms of the policy for the amount of the judgment in the said action not exceeding the amount of the policy. ~~No such policy shall be issued or delivered in this state by any foreign or domestic corporation, insurance underwriters, association or other insurer authorized to do business in this state, unless there shall be contained within such policy.~~

(2) A provision that notice given by or on behalf of the insured to any authorized agent of the insurer within this state, with



particulars sufficient to identify the insured, shall be deemed to be notice to the insurer. ~~No such policy shall~~

(3) If the policy is to be issued or delivered in this state to the owner of a motor vehicle, ~~by any domestic or foreign corporation, insurance underwriters, association or other insurer authorized to do business in this state, unless there shall be contained within such policy~~ a provision insuring ~~such the~~ owner against liability for damages for death or injury to person or property resulting from negligence in the operation of ~~such the~~ motor vehicle, in the business of ~~such the~~ owner or otherwise, by any person legally using or operating the ~~same~~ motor vehicle with the permission, expressed or implied, of ~~such the~~ owner.

(c) If a motor vehicle is owned jointly by a husband and wife:

(1) either spouse may, with the written consent of the other spouse, be excluded from coverage under ~~the a~~ policy **described in subsection (b)(3); and**

(2) ~~A the~~ husband and wife may choose ~~instead~~ to have their liability covered under separate policies.

(d) This section does not prohibit an insurer from making available a named driver exclusion in a commercial motor vehicle policy.

(e) A policy issued in violation of this section shall, nevertheless, be held valid but be deemed to include the provisions required by this section, and when any provision in ~~such the~~ policy or rider is in conflict with ~~the a~~ provision required to be contained by this section, the rights, duties and obligations of the insurer, the policyholder and the injured person or persons shall be governed by the provisions of this section.

~~(b)~~ **(f)** No policy of insurance shall be issued or delivered in this state by any foreign or domestic corporation, insurance underwriters, association, or other insurer authorized to do business in this state, unless it contains a provision that authorizes such foreign or domestic corporation, insurance underwriters, association, or other insurer authorized to do business in this state to settle the liability of its insured under IC 34-18 without the consent of its insured when the unanimous opinion of the medical review panel under IC 34-18-10-22(b)(1) is that the evidence supports the conclusion that the defendant failed to comply with the appropriate standard of care as charged in the complaint.

SECTION 5. IC 27-1-15.6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. (a) Unless denied licensure under section 12 of this chapter, a nonresident person shall



- 1 receive a nonresident producer license if:
- 2 (1) the person is currently licensed as a resident and in good
- 3 standing in the person's home state;
- 4 (2) the person has submitted the proper request for licensure and
- 5 has paid the fees required under section 32 of this chapter;
- 6 (3) the person has submitted or transmitted to the commissioner:
- 7 (A) the application for licensure that the person submitted to
- 8 the person's home state; or
- 9 (B) a completed uniform application; and
- 10 (4) the person's home state awards non-resident producer licenses
- 11 to residents of Indiana on the same basis as non-resident producer
- 12 licenses are awarded to residents of other states under this
- 13 chapter.
- 14 (b) The commissioner may verify a producer's licensing status
- 15 through the Producer Database maintained by the National Association
- 16 of Insurance Commissioners and its affiliates or subsidiaries.
- 17 (c) A:
- 18 (1) person who holds an Indiana nonresident producer's license
- 19 and moves from one state to another state; or
- 20 (2) a resident producer who moves from Indiana to another
- 21 state;
- 22 shall file a change of address with the Indiana department of insurance
- 23 and provide certification from the new resident state not more than
- 24 thirty (30) days after the change of legal residence. No fee or license
- 25 application is required under this subsection.
- 26 (d) Notwithstanding any other provision of this chapter, a person
- 27 licensed as a surplus lines producer in the person's home state shall
- 28 receive a nonresident surplus lines producer license under subsection
- 29 (a). Except as provided in subsection (a), nothing in this section
- 30 otherwise amends or supercedes IC 27-1-15.8, as added by this act.
- 31 (e) Notwithstanding any other provision of this chapter, a person
- 32 who is not a resident of Indiana and who is licensed as a limited lines
- 33 credit insurance producer or another type of limited lines producer in
- 34 the person's home state shall, upon application, receive a nonresident
- 35 limited lines producer license under subsection (a) granting the same
- 36 scope of authority as is granted under the license issued by the person's
- 37 home state.
- 38 **(f) Notwithstanding any other provision of this chapter, a**
- 39 **nonresident producer who receives a nonresident producer license**
- 40 **under this section shall maintain licensure in good standing in the**
- 41 **nonresident producer's home state.**
- 42 **(g) If a nonresident producer fails to maintain licensure in good**



standing in the nonresident producer's home state, the commissioner may:

(1) in the commissioner's sole discretion;

(2) without a hearing; and

(3) in addition to any other sanction allowed by law;

suspend any Indiana insurance producer license held by the nonresident producer until the commissioner receives notice from the nonresident producer's home state that the home state license is in effect.

SECTION 6. IC 27-1-23-1, AS AMENDED BY P.L.81-2012, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. As used in this chapter, the following terms shall have the respective meanings set forth in this section, unless the context shall otherwise require:

(a) An "acquiring party" is the specific person by whom an acquisition of control of a domestic insurer or of any corporation controlling a domestic insurer is to be effected, and each person who directly, or indirectly through one (1) or more intermediaries, controls the person specified.

(b) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) A "beneficial owner" of a voting security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, revocable or irrevocable proxy, or otherwise has or shares:

(1) voting power including the power to vote, or to direct the voting of, the security; or

(2) investment power which includes the power to dispose, or to direct the disposition, of the security.

(d) "Commissioner" means the insurance commissioner of this state.

(e) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the beneficial ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office. Control shall be presumed to exist if any person beneficially owns ten percent (10%) or more of the voting securities of any other person. The commissioner may determine this presumption has been rebutted only by a showing



made in the manner provided by section 3(k) of this chapter that control does not exist in fact, after giving all interested persons notice and an opportunity to be heard. Control shall be presumed again to exist upon the acquisition of beneficial ownership of each additional five percent (5%) or more of the voting securities of the other person. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(f) "Department" means the department of insurance created by IC 27-1-1-1.

(g) A "domestic insurer" is an insurer organized under the laws of this state.

(h) "Earned surplus" means an amount equal to the unassigned funds of an insurer as set forth in the most recent annual statement of an insurer that is submitted to the commissioner, excluding surplus arising from unrealized capital gains or revaluation of assets.

(i) "Enterprise risk" means an activity, circumstance, event, or series of events that involves at least one (1) affiliate of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or the insurer's insurance holding company system as a whole, including an activity, circumstance, event, or series of events that would cause the:

(1) insurer's risk based capital to fall into company action level under IC 27-1-36; or

(2) insurer to be in hazardous financial condition subject to IC 27-1-3-7 and rules adopted under IC 27-1-3-7.

(j) "Group wide supervisor" means the regulatory official who is:

(1) authorized by the commissioner to conduct and coordinate group wide supervision of an internationally active insurance group; and

(2) determined by the commissioner to have sufficient significant contact with the internationally active insurance group to enable group wide supervision.

~~(j)~~ **(k)** An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

~~(k)~~ **(l)** "Insurer" has the same meaning as set forth in IC 27-1-2-3, except that it does not include:

(1) agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state; or



(2) nonprofit medical and hospital service associations.
 The term includes a health maintenance organization (as defined in IC 27-13-1-19) and a limited service health maintenance organization (as defined in IC 27-13-1-27).

(m) "Internationally active insurance group" means an insurance holding company system that:

(1) includes an insurer that is registered under section 3 of this chapter; and

(2) meets the following requirements:

(A) The insurance holding company system has premiums written in at least three (3) countries.

(B) The percentage of the insurance holding company system's gross premiums written outside the United States is at least ten percent (10%) of the insurance holding company system's total gross written premiums.

(C) Based on a three (3) year rolling average, the:

(i) total assets of the insurance holding company system are at least fifty billion dollars (\$50,000,000,000); or

(ii) total gross written premiums of the insurance holding company system are at least ten billion dollars (\$10,000,000,000).

(n) "NAIC" refers to the National Association of Insurance Commissioners.

(o) "Supervisory college" means a temporary or permanent forum:

(1) comprised of regulators, including other state, federal, and international regulators, responsible for the supervision of:

(A) a domestic insurer that is part of an insurance holding company system that has international operations;

(B) an insurance holding company system described in clause (A); or

(C) an affiliate of:

(i) a domestic insurer described in clause (A); or

(ii) an insurance holding company system described in clause (B); and

(2) established to facilitate communication and cooperation between the regulators described in subdivision (1).

(p) A "person" is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert. ~~but shall~~ The term does not include any the following:



(1) A securities broker performing no more than the usual and customary broker's function.

(2) A joint venture partnership that is exclusively engaged in owning, managing, leasing, or developing real or tangible personal property.

~~(p)~~ (q) A "policyholder" of a domestic insurer includes any person who owns an insurance policy or annuity contract issued by the domestic insurer, any person reinsured by the domestic insurer under a reinsurance contract or treaty between the person and the domestic insurer, and any health maintenance organization with which the domestic insurer has contracted to provide services or protection against the cost of care.

(r) "Securityholder" means a person that owns a security of a specified person, including common stock, preferred stock, debt obligations, and any other security that:

(1) is convertible to; or

(2) evidences the right to acquire;

a common stock, preferred stock, or debt obligation.

~~(p)~~ (s) A "subsidiary" of a specified person is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

~~(q)~~ (t) "Surplus" means the total of gross paid in and contributed surplus, special surplus funds, and unassigned surplus, less treasury stock at cost.

~~(r)~~ (u) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security.

SECTION 7. IC 27-1-23-3, AS AMENDED BY P.L.129-2014, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

(1) this section;

(2) section 4(a) and 4(c) of this chapter; and

(3) section 4(b) of this chapter or a provision such as the following:

Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen (15) days after the end of the month in which it learns of



1 each such change or addition.
 2 Any insurer which is subject to registration under this section shall
 3 register within fifteen (15) days after it becomes subject to registration,
 4 and annually thereafter by July 1 of each year for the previous calendar
 5 year, unless the commissioner for good cause shown extends the time
 6 for registration, and then within such extended time. The commissioner
 7 may require any authorized insurer which is a member of an insurance
 8 holding company system but not subject to registration under this
 9 section to furnish a copy of the registration statement or other
 10 information filed by such insurer with the insurance regulatory
 11 authority of its domiciliary jurisdiction.

12 (b) Every insurer subject to registration shall file a registration
 13 statement on a form prescribed by the commissioner, which shall
 14 contain current information about all of the following:

15 (1) The capital structure, general financial condition, ownership
 16 and management of the insurer and any person controlling the
 17 insurer.

18 (2) The identity of every member of the insurance holding
 19 company system.

20 (3) The following agreements in force, relationships subsisting,
 21 and transactions that are currently outstanding or that have
 22 occurred during the last calendar year between such insurer and
 23 its affiliates:

24 (A) loans, other investments, or purchases, sales or exchanges
 25 of securities of the affiliates by the insurer or of the insurer by
 26 its affiliates;

27 (B) purchases, sales, or exchanges of assets;

28 (C) transactions not in the ordinary course of business;

29 (D) guarantees or undertakings for the benefit of an affiliate
 30 which result in an actual contingent exposure of the insurer's
 31 assets to liability, other than insurance contracts entered into
 32 in the ordinary course of the insurer's business;

33 (E) all management and service contracts and all cost-sharing
 34 arrangements; ~~other than cost allocation arrangements based~~
 35 ~~upon generally accepted accounting principles;~~

36 (F) reinsurance agreements; ~~covering all or substantially all of~~
 37 ~~one (1) or more lines of insurance of the ceding insurer;~~

38 (G) dividends and other distributions to shareholders; and

39 (H) consolidated tax allocation agreements.

40 (4) Any pledge of the insurer's stock, including stock of any
 41 subsidiary or controlling affiliate, for a loan made to any member
 42 of the insurance holding company system.



(5) If requested by the commissioner, financial statements of the insurance holding company system, the parent corporation of the insurer, or all affiliates, including annual audited financial statements filed with the federal Securities and Exchange Commission under the Securities Act of 1933 or the federal Securities Exchange Act of 1934, both as amended.

(6) Statements reflecting that the insurer's:

(A) board of directors oversees corporate governance and internal controls; and

(B) officers or senior management have approved and implemented and maintain and monitor corporate governance and internal control procedures.

(7) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms prescribed by the commissioner.

(8) Other information that the commissioner requires under rules adopted under IC 4-22-2.

(c) Every registration statement must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving **one-half of** one per cent (~~1%~~) (**0.5%**) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(e) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms prescribed by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition.

(f) A person within an insurance holding company system subject to registration under this chapter shall provide complete and accurate information to an insurer when that information is reasonably necessary to enable the insurer to comply with this chapter.

(g) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is subject to the provisions of this section.

(h) The commissioner may require or allow two (2) or more affiliated insurers subject to registration under this section to file a



1 consolidated registration statement or consolidated reports amending
2 their consolidated registration statement or their individual registration
3 statements.

4 (i) The commissioner may allow an insurer which is authorized to
5 do business in this state and which is a member of an insurance holding
6 company system to register on behalf of any affiliated insurer which is
7 required to register under subsection (a) and to file all information and
8 material required to be filed under this section.

9 (j) The provisions of this section shall not apply to any insurer,
10 information, or transaction if and to the extent that the commissioner
11 by rule or order shall exempt the same from the provisions of this
12 section.

13 (k) Any person may file with the commissioner a disclaimer of
14 affiliation with any authorized insurer or such a disclaimer may be filed
15 by such insurer or any member of an insurance holding company
16 system. The disclaimer shall fully disclose all material relationships
17 and bases for affiliation between such person and such insurer as well
18 as the basis for disclaiming such affiliation. After a disclaimer has been
19 filed, the insurer shall be relieved of any duty to register or report under
20 this section which may arise out of the insurer's relationship with such
21 person unless and until the commissioner disallows such disclaimer. A
22 disclaimer of affiliation is considered to have been granted unless the
23 commissioner, less than thirty (30) days after receiving a disclaimer,
24 notifies the person filing the disclaimer that the disclaimer is
25 disallowed. The commissioner shall disallow such disclaimer only after
26 furnishing all parties in interest with notice and opportunity to be
27 heard.

28 (l) The person that ultimately controls an insurer that is subject to
29 registration shall file with the lead state commissioner of the insurance
30 holding company system (as determined by the procedures in the
31 Financial Analysis Handbook adopted by the NAIC) an annual
32 enterprise risk report that identifies, to the best of the person's
33 knowledge, the material risks within the insurance holding company
34 system that could pose enterprise risk to the insurer.

35 (m) The commissioner may impose on a person a civil penalty of
36 one hundred dollars (\$100) per day that the person fails to file, within
37 the period specified, a:

38 (1) registration statement; or

39 (2) summary of a registration statement or enterprise risk filing;
40 required by this section. The commissioner shall deposit a civil penalty
41 collected under this subsection in the department of insurance fund
42 established by IC 27-1-3-28.



1 SECTION 8. IC 27-1-23-4, AS AMENDED BY P.L.146-2015,
 2 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2016]: Sec. 4. (a) Material transactions within an insurance
 4 holding company system to which an insurer subject to registration is
 5 a party shall be subject to the following standards:

6 (1) The terms shall be fair and reasonable.

7 (2) Agreements concerning cost sharing services and management
 8 must include provisions required by the commissioner in rules
 9 adopted under IC 4-22-2.

10 (3) The charges or fees for services performed shall be
 11 reasonable.

12 (4) The expenses incurred and payment received shall be
 13 allocated to the insurer in conformity with customary insurance
 14 accounting practices consistently applied.

15 (5) The books, accounts, and records of each party as to all
 16 transactions described in this subsection shall be so maintained as
 17 to clearly and accurately disclose the nature and details of the
 18 transactions, including accounting information necessary to
 19 support the reasonableness of the charges or fees to the respective
 20 parties.

21 (6) The insurer's surplus as regards policyholders following any
 22 transactions with affiliates or shareholder dividend shall be
 23 reasonable in relation to the insurer's outstanding liabilities and
 24 adequate to its financial needs.

25 (b) The following transactions involving a domestic insurer and any
 26 person in its insurance holding company system (including
 27 amendments or modifications to affiliate agreements previously filed
 28 under this chapter) that are subject to any materiality standards
 29 described in subdivisions (1) through (7) may not be entered into
 30 unless the insurer has notified the commissioner in writing of its
 31 intention to enter into such transaction at least thirty (30) days prior
 32 thereto, or such shorter period as the commissioner may permit, and the
 33 commissioner has not disapproved it within that period:

34 (1) Sales, purchases, exchanges, loans or extensions of credit,
 35 guarantees, or investments, provided those transactions are equal
 36 to or exceed:

37 (A) with respect to nonlife insurers, the lesser of three percent
 38 (3%) of the insurer's admitted assets or twenty-five percent
 39 (25%) of surplus as regards policyholders; and

40 (B) with respect to life insurers, three percent (3%) of the
 41 insurer's admitted assets;

42 each as of December 31 next preceding.



(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes those loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, provided those transactions are equal to or exceed:

- (A) with respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and
- (B) with respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

(3) Reinsurance agreements or modifications thereto, including:

(A) reinsurance pooling agreements; and

(B) agreements under which:

- (i) a reinsurance premium;
- (ii) a change in the insurer's liabilities; or
- (iii) the projected reinsurance premium;

in any of the immediately succeeding three (3) years equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer.

(4) Management agreements, service contracts, cost-sharing arrangements, lease agreements, **guarantees**, and tax allocation agreements.

(5) Guarantees made by the insurer, only as follows:

(A) A guarantee, the amount of which is not quantifiable.

(B) A guarantee, the amount of which is quantifiable, if the amount of the guarantee exceeds the lesser of:

- (i) one-half of one percent (0.5%) of the insurer's admitted assets; or
- (ii) ten percent (10%) of surplus as regards policyholders; on December 31 of the immediately preceding calendar year.

(6) Direct or indirect acquisitions or investments, as follows:

(A) In:

- (i) a person that controls the insurer; or



(ii) an affiliate of the insurer in an amount that, together with the insurer's present holdings in the investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders.

(B) This subdivision does not apply to direct or indirect acquisitions or investments in:

- (i) subsidiaries acquired under section 2.6 of this chapter; or
- (ii) nonsubsidiary insurance affiliates that are subject to this chapter.

(7) Material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

This subsection does not authorize or permit any transactions that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law. Notice concerning amendments or modifications of a transaction must include the reasons for the change and the financial impact on the domestic insurer. Not more than thirty (30) days after an agreement that was previously filed under this section is terminated, the domestic insurer shall send written notice of the termination to the commissioner. The commissioner shall determine whether a filing concerning the termination is required and shall notify the domestic insurer of the commissioner's determination.

(c) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.

(d) The commissioner, in reviewing transactions pursuant to subsection (b), shall consider whether the transactions comply with the standards set forth in subsection (a) and whether the transactions may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in that corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

(f) For purposes of this chapter, in determining whether an insurer's surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other



appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification, and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

(8) The surplus as regards policyholders maintained by other comparable insurers in respect of the factors described in subdivisions (1) through (7).

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in subsidiaries, except that the commissioner may discount or treat any such investment in subsidiaries as a disallowed asset for purposes of determining the adequacy of surplus whenever in the commissioner's judgment such investment so warrants.

(11) The quality of the earnings of the insurer and the extent to which the reported earnings of the insurer include extraordinary items.

(g) No domestic insurer subject to registration under section 3 of this chapter shall pay an extraordinary dividend or make any other extraordinary distribution to its security holders until:

(1) thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment; or

(2) the commissioner shall have approved such payment within such thirty (30) day period.

(h) For purposes of subsection (g), **the following apply with respect to an extraordinary dividend or distribution:**

(1) An extraordinary dividend or distribution is any dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the twelve (12) consecutive months ending on the date on which the proposed dividend or distribution is scheduled to be made, exceeds the ~~greater~~ **lesser** of:

(+) **(A)** ten percent (10%) of such insurer's surplus as regards policyholders as of the most recently preceding December 31; or



1 ~~(2)~~ **(B)** the:

2 **(i)** net gain from operations of such insurer, if such insurer
3 is a life insurer; or ~~the~~

4 **(ii)** net income, if such insurer is not a life insurer;
5 **not including realized capital gains**, for the twelve (12)
6 month period ending on the most recently preceding December
7 31.

8 **(2) An extraordinary dividend or distribution does not include**
9 **pro rata distribution of any class of an insurer's own**
10 **securities.**

11 **(3) For purposes of determining whether a dividend or**
12 **distribution is extraordinary, an insurer that is not a life**
13 **insurer may carry forward net income that:**

14 **(A) was received during the two (2) immediately preceding**
15 **calendar years; and**

16 **(B) has not been paid out as dividends;**
17 **computed by subtracting the amount of dividends paid in the**
18 **first and second immediately preceding calendar years from**
19 **the amount of net income, not including realized capital gains,**
20 **received in the second and third immediately preceding**
21 **calendar years.**

22 (i) Notwithstanding any other provision of law, a domestic insurer
23 may declare an extraordinary dividend or distribution which is
24 conditional upon the commissioner's approval thereof, but such a
25 declaration shall confer no rights upon shareholders until:

26 (1) the commissioner has approved the payment of such dividend
27 or distribution; or

28 (2) the commissioner has not disapproved the payment within the
29 thirty (30) day period referred to in subsection (g).

30 (j) The commissioner may impose a civil penalty of five thousand
31 dollars (\$5,000) on a person who fails to file a transaction as required
32 by this section. The commissioner shall deposit a civil penalty collected
33 under this subsection in the department of insurance fund established
34 by IC 27-1-3-28.

35 SECTION 9. IC 27-1-23-5.1, AS ADDED BY P.L.81-2012,
36 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2016]: Sec. 5.1. (a) The commissioner may participate in a
38 supervisory college for a domestic insurer that is part of an insurance
39 holding company system that has international operations, and any
40 affiliate of the insurer, to do the following:

41 (1) Determine whether the insurer or affiliate is in compliance
42 with this chapter.



(2) Assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management, and governance processes that apply to the insurer or affiliate.

(3) Examine the insurer or affiliate.

(b) The powers of the commissioner under subsection (a) include the following:

(1) Initiation of the establishment of the supervisory college.

(2) Clarification of the membership and participation of other supervisors in the supervisory college.

(3) Clarification of the functions of the supervisory college and the role of other regulators, including the establishment of a group **wide** supervisor.

(4) Coordination of the activities of the supervisory college, including planning meetings, **supervisory activities**, and information sharing procedures.

(5) Establishment of a crisis management plan.

(c) An insurer that is described in subsection (a) shall pay the commissioner's reasonable expenses of participation in a supervisory college, including travel expenses. The commissioner may establish a regular assessment to the insurer for payment of the expenses.

(d) The commissioner may enter into agreements in accordance with the requirements that apply to an agreement entered into with the NAIC under section 6 of this chapter to specify the activities of the commissioner and other regulators participating in the supervisory college.

(e) This section does not delegate to a supervisory college a commissioner's authority to regulate or supervise the insurer described in subsection (a) or the insurer's affiliates within the commissioner's jurisdiction.

SECTION 10. IC 27-1-23-5.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 5.3. (a) The commissioner shall, in cooperation with other state, federal, and international regulatory agencies, do either of the following to identify a single group wide supervisor for an internationally active insurance group:**

(1) Act as the group wide supervisor if the commissioner determines that the internationally active insurance group conducts substantial insurance operations in Indiana.

(2) Acknowledge another regulatory official as the group wide supervisor if the commissioner determines that the internationally active insurance group:



1 (A) does not have substantial insurance operations in the
2 United States;

3 (B) has substantial insurance operations in the United
4 States, but not in Indiana; or

5 (C) has substantial insurance operations in the United
6 States and Indiana, but the commissioner has determined
7 that, according to subsections (c), (d), and (j) that the other
8 regulatory official is the appropriate group wide
9 supervisor.

10 (b) The commissioner may, upon request of an insurance
11 holding company system that does not qualify as an internationally
12 active insurance group, make a determination and act as, or
13 acknowledge another regulatory official as, a group wide
14 supervisor for the insurance holding company system under
15 subsection (a) as if the insurance holding company system was an
16 internationally active insurance group.

17 (c) In making a determination under subsection (a), the
18 commissioner shall consider all of the following:

19 (1) The place of domicile of the internationally active
20 insurance group insurers that hold the largest share of the
21 internationally active insurance group's written premiums,
22 assets, or liabilities.

23 (2) The place of domicile of the top tiered insurers in the
24 internationally active insurance group's insurance company
25 holding system.

26 (3) The location of the internationally active insurance
27 group's executive offices or largest operational offices.

28 (4) Whether another regulatory official is acting or seeks to
29 act as the group wide supervisor under a regulatory system
30 that the commissioner determines to be:

31 (A) substantially similar to the regulatory system under
32 the law of this state; or

33 (B) sufficient to provide for group wide supervision,
34 enterprise risk analysis, and cooperation with other
35 regulatory officials.

36 (5) Whether a regulatory official described in subdivision 4
37 provides the commissioner with reasonably reciprocal
38 recognition and cooperation.

39 (d) If a regulatory official who is identified as the group wide
40 supervisor under this section considers another regulatory official
41 to be more appropriate to serve as the group wide supervisor, the
42 commissioner shall cooperatively do the following with the other



regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group:

(1) Consider the factors described in subsection (c) with respect to the other regulatory official considered more appropriate to serve as the group wide supervisor.

(2) If the commissioner considers the other regulatory official to be appropriate to serve as the group wide supervisor, acknowledge the other regulatory official, subject to the acknowledgment of the other regulatory officials.

(e) Notwithstanding any other law, if another regulatory official is acting as the group wide supervisor of an internationally active insurance group, the commissioner shall acknowledge the other regulatory official as the group wide supervisor. However, if there is a material change in the internationally active insurance group that results in:

(1) the internationally active insurance group's Indiana domiciled insurers holding the largest share of the internationally active insurance group's premiums, assets, or liabilities; or

(2) Indiana being the domicile of the internationally active insurance group's insurance holding company system's top tiered insurers;

the commissioner shall make a determination concerning the appropriate group wide supervisor for the internationally active insurance group as described in subsections (c) and (d).

(f) The commissioner may, under section 5 of this chapter, obtain from an insurer that is registered under section 3 of this chapter all information necessary to make a determination under this section.

(g) Before making a final determination that the commissioner will act as the group wide supervisor of an internationally active insurance group:

(1) the commissioner shall notify the:

(A) insurer that is registered under section 3 of this chapter; and

(B) ultimate controlling person;

in the internationally active insurance group; and

(2) the internationally active insurance group has at least thirty (30) days to provide the commissioner with additional information relevant to the commissioner's final determination.



(h) Upon making a final determination that the commissioner will act as the group wide supervisor of an internationally active insurance group, the commissioner shall publish that information, including the identity of the internationally active insurance group, in the Indiana Register and on the department's Internet web site.

(i) The commissioner may do any of the following with respect to an internationally active insurance group subject to group wide supervision by the commissioner:

(1) Assess enterprise risk in the internationally active insurance group to ensure that:

(A) the material financial condition and liquidity risks to members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(B) reasonable and effective mitigation measures are in place to address the risks described in clause (A).

(2) Request from any member of the internationally active insurance group information necessary and appropriate to assess enterprise risk, including the following information concerning the members of the internationally active insurance group:

(A) Governance, risk assessment, and management.

(B) Capital adequacy.

(C) Material intercompany transactions.

(3) Coordinate and, through the regulatory authority of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures to ensure that the internationally active insurance group is able to, in a timely manner, recognize and mitigate enterprise risks to members of the internationally active insurance group that are engaged in the business of insurance.

(4) Communicate with other state, federal, and international regulatory officials for members in the internationally active insurance group and share relevant information subject to the confidentiality provisions of section 6 of this chapter, through supervisory colleges under section 5.1 of this chapter or otherwise.

(5) Enter into agreements with or obtain documentation from any:

(A) insurer registered under section 3 of this chapter;

(B) member of the internationally active insurance group;



1 and

2 (C) other state, federal, and international regulatory
3 official for members of the internationally active insurance
4 group;

5 to establish the basis for or otherwise clarify the
6 commissioner's role as group wide supervisor, including
7 provisions to resolve disputes with other regulatory officials.
8 An agreement or documentation described in this subdivision
9 may not serve as evidence in any proceeding that an insurer
10 or a person in an insurance holding company system that is
11 not domiciled or incorporated in Indiana is doing business in
12 Indiana or is otherwise subject to the jurisdiction of this state.

13 (6) Other group wide supervision activities consistent with
14 this section, as the commissioner determines necessary.

15 (j) If the commissioner acknowledges another regulatory official
16 from a jurisdiction that is not accredited by the NAIC as the group
17 wide supervisor of an internationally active insurance group, the
18 commissioner may reasonably cooperate, through supervisory
19 colleges or otherwise, with the regulatory official's group wide
20 supervision if:

21 (1) the commissioner's cooperation is in compliance with the
22 law of this state; and

23 (2) the regulatory official recognizes and cooperates with the
24 commissioner's activities as a group wide supervisor for other
25 internationally active insurance groups, as applicable.

26 If a regulatory official is not described in subdivision (2), the
27 commissioner may refuse to recognize and cooperate with the
28 regulatory official as the group wide supervisor.

29 (k) The commissioner may enter into agreements with or obtain
30 documentation from:

31 (1) an insurer registered under section 3 of this chapter;

32 (2) an affiliate of an insurer described in subdivision (1); and

33 (3) other state, federal, and international regulatory agencies
34 for members;

35 of an internationally active insurance group that provide a basis
36 for or clarify a regulatory official's role as group wide supervisor
37 of the internationally active insurance group.

38 (l) An insurer that is registered under section 3 of this chapter
39 and subject to this section is liable for and shall pay the reasonable
40 expenses of the commissioner's participation in the implementation
41 of this section, including costs of attorneys, actuaries, other
42 professionals, and reasonable travel expense.



SECTION 11. IC 27-1-23-8.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 8.1. (a) If it appears to the commissioner that an insurer or a director, an officer, an employee, or an agent of an insurer has knowingly or intentionally violated this chapter, the commissioner may report the violation to the prosecutor of the county in which the conduct giving rise to the report occurred.**

(b) Except as provided in subsection (c), an officer, a director, an employee, or an agent of an insurer or of an insurance holding company system who knowingly or intentionally violates the following commits a Class A misdemeanor (IC 35-50-3-2):

- (1) Section 1.5(a) or 1.5(b) of this chapter.**
- (2) Section 2(a) or 2(b) of this chapter.**
- (3) Section 2.5(n) or 2.5(o) of this chapter.**
- (4) Section 2.6(g), 2.6(i), 2.6(j), 2.6(k), 2.6(l), 2.6(m), 2.6(n), or 2.6(p) of this chapter.**
- (5) Section 3(a), 3(b), 3(e), or 3(f) of this chapter.**
- (6) Section 4(a), 4(b), 4(c), 4(e), 4(g), or 4(i) of this chapter.**
- (7) Section 5(c) or 5(e) of this chapter.**
- (8) Section 8(b) of this chapter.**

(c) An officer, a director, or an employee of an insurance holding company system who knowingly or intentionally subscribes to or makes or causes to be made a false statement, false report, or false filing with the intent to deceive the commissioner in the performance of the commissioner's duties under this chapter:

- (1) commits a Class A misdemeanor (IC 35-50-3-2); and**
- (2) except as provided in subsection (d), is in the officer's, director's, or employee's individual capacity subject to a civil penalty imposed by the commissioner of not more than one million dollars (\$1,000,000).**

(d) A director or an officer of an insurance holding company system who:

- (1) knowingly or intentionally violates this chapter; or**
- (2) knowingly or intentionally participates in, assents to, or permits an insurer's, officer's, employee's, or agent's engagement in transactions or the purchase of investments that:**
 - (A) have not been properly reported or submitted under section 3(a), 4(b), or 4(g) of this chapter; or**
 - (B) violate this chapter;**

is, in the director's or officer's individual capacity and after notice



1 and hearing under IC 4-21.5, subject to a civil penalty of not more
2 than ten thousand dollars (\$10,000) per violation.

3 (e) The commissioner may impose a civil penalty of not more
4 than one million dollars (\$1,000,000) on an insurer that knowingly
5 or intentionally violates this chapter.

6 (f) In determining the amount of the civil penalty under this
7 section, the commissioner shall consider the appropriateness of the
8 amount of the civil penalty with respect to the gravity of the
9 violation, any history of previous violations, and other matters
10 considered appropriate by the commissioner.

11 (g) If it appears to the commissioner that an insurer subject to
12 this chapter, or a director, an officer, an employee, or an agent of
13 an insurer, has engaged in a transaction or entered into a contract:

14 (1) that is subject to section 4 of this chapter;

15 (2) for which the commissioner's approval was not requested;
16 and

17 (3) that would not have been approved by the commissioner
18 if the commissioner's approval had been requested;

19 the commissioner may order the insurer to immediately cease and
20 desist from activity under the transaction or contract. The
21 commissioner may, after notice and hearing under IC 4-21.5, order
22 the insurer to void any contract and restore the status quo if the
23 commissioner determines that the action is in the best interest of
24 the insurer's policyholders or creditors or the public.

25 (h) If it appears to the commissioner that:

26 (1) a person has committed a violation of section 2 of this
27 chapter; and

28 (2) the violation prevents the full understanding of the
29 enterprise risk to the insurer by affiliates or the insurance
30 holding company system;

31 the violation may serve as an independent basis for disapproving
32 dividends or distributions and for placing the insurer under an
33 order of supervision in accordance with IC 27-9.

34 SECTION 12. IC 27-1-27-7.2 IS ADDED TO THE INDIANA
35 CODE AS A NEW SECTION TO READ AS FOLLOWS
36 [EFFECTIVE JULY 1, 2016]: Sec. 7.2. (a) Notwithstanding any
37 other provision of this chapter, a nonresident public adjuster who
38 receives a certificate of authority under this chapter shall maintain
39 licensure as a public adjuster in good standing in the nonresident
40 public adjuster's home state.

41 (b) If a nonresident public adjuster fails to maintain licensure
42 in good standing in the nonresident public adjuster's home state,



1 **the commissioner may:**

2 **(1) in the commissioner's sole discretion;**

3 **(2) without a hearing; and**

4 **(3) in addition to any other sanction allowed by law;**

5 **suspend any Indiana insurance producer license or certificate of**
 6 **authority held by the nonresident public adjuster until the**
 7 **commissioner receives notice from the nonresident public**
 8 **adjuster's home state that the home state license is in effect.**

9 SECTION 13. IC 27-7-3-15.5, AS AMENDED BY P.L.116-2015,
 10 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2016]: Sec. 15.5. (a) This section applies to the following
 12 transactions:

13 (1) A mortgage transaction (as defined in IC 24-9-3-7(a)) that:

14 (A) is:

15 (i) a first lien purchase money mortgage transaction; or

16 (ii) a refinancing transaction; and

17 (B) is closed by a closing agent after December 31, 2009.

18 (2) A real estate transaction (as defined in IC 24-9-3-7(b)) that:

19 (A) does not involve a mortgage transaction described in
 20 subdivision (1); and

21 (B) is closed by a closing agent (as defined in
 22 IC 6-1.1-12-43(a)(2)) after December 31, 2011.

23 (b) For purposes of this subsection, a person described in this
 24 subsection is involved in a transaction to which this section applies if
 25 the person participates in or assists with, or will participate in or assist
 26 with, a transaction to which this section applies. The department shall
 27 establish and maintain an electronic system for the collection and
 28 storage of the following information, to the extent applicable,
 29 concerning a transaction to which this section applies:

30 (1) In the case of a transaction described in subsection (a)(1), the
 31 name and license number (under IC 23-2-5) of each loan
 32 brokerage business involved in the transaction.

33 (2) In the case of a transaction described in subsection (a)(1), the
 34 name and license or registration number of any mortgage loan
 35 originator who is:

36 (A) either licensed or registered under state or federal law as
 37 a mortgage loan originator consistent with the Secure and Fair
 38 Enforcement for Mortgage Licensing Act of 2008 (H.R. 3221
 39 Title V); and

40 (B) involved in the transaction.

41 (3) The name and license number (under IC 25-34.1) of each:

42 (A) broker company; and



- 1 (B) broker if any;
- 2 involved in the transaction.
- 3 (4) The following information:
- 4 (A) The:
- 5 (i) name of; and
- 6 (ii) code assigned by the National Association of Insurance
- 7 Commissioners (NAIC) to;
- 8 each title insurance underwriter involved in the transaction.
- 9 (B) The type of title insurance policy issued in connection with
- 10 the transaction.
- 11 (5) The name and license number (under IC 27-1-15.6) of each
- 12 title insurance agency and agent involved in the transaction as a
- 13 closing agent (as defined in IC 6-1.1-12-43(a)(2)).
- 14 (6) The following information:
- 15 (A) The name and:
- 16 (i) license or certificate number (under IC 25-34.1-3-8) of
- 17 each licensed or certified real estate appraiser; or
- 18 (ii) license number (under IC 25-34.1) of each broker;
- 19 who appraises the property that is the subject of the
- 20 transaction.
- 21 (B) The name and registration number (under
- 22 IC 25-34.1-11-10) of any appraisal management company that
- 23 performs appraisal management services (as defined in
- 24 IC 25-34.1-11-3) in connection with the transaction.
- 25 (7) In the case of a transaction described in subsection (a)(1), the
- 26 name of the creditor and, if the creditor is required to be licensed
- 27 under IC 24-4.4, the license number of the creditor.
- 28 (8) In the case of a transaction described in subsection
- 29 (a)(1)(A)(i) or (a)(2), the name of the seller of the property that is
- 30 the subject of the transaction.
- 31 (9) In the case of a transaction described in subsection
- 32 (a)(1)(A)(i), the following information:
- 33 (A) The name of the buyer of the property that is the subject of
- 34 the transaction.
- 35 (B) The purchase price of the property that is the subject of the
- 36 transaction.
- 37 (C) The loan amount of the mortgage transaction.
- 38 (10) In the case of a transaction described in subsection (a)(2), the
- 39 following information:
- 40 (A) The name of the buyer of the property that is the subject of
- 41 the transaction.
- 42 (B) The purchase price of the property that is the subject of the



- 1 transaction.
- 2 (11) In the case of a transaction described in subsection
- 3 (a)(1)(A)(ii), the following information:
- 4 (A) The name of the borrower in the mortgage transaction.
- 5 (B) The loan amount of the refinancing.
- 6 (12) The:
- 7 (A) name; and
- 8 (B) license number, certificate number, registration number,
- 9 or other code, as appropriate;
- 10 of any other person that is involved in a transaction to which this
- 11 section applies, as the department may prescribe.
- 12 (c) The system established by the department under this section
- 13 must include a form that:
- 14 (1) is uniformly accessible in an electronic format to the closing
- 15 agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and
- 16 (2) allows the closing agent to do the following:
- 17 (A) Input information identifying the property that is the
- 18 subject of the transaction by lot or parcel number, street
- 19 address, or some other means of identification that the
- 20 department determines:
- 21 (i) is sufficient to identify the property; and
- 22 (ii) is determinable by the closing agent.
- 23 (B) Subject to subsection (d) and to the extent determinable,
- 24 input the applicable information described in subsection (b).
- 25 (C) Respond to the following questions, if applicable:
- 26 (i) "On what date did you receive the closing instructions
- 27 from the creditor in the transaction?"
- 28 (ii) "On what date did the transaction close?"
- 29 (D) Submit the form electronically to a data base maintained
- 30 by the department.
- 31 (d) Not later than the time of the closing **or the date of**
- 32 **disbursement, whichever is later**, each person described in subsection
- 33 (b), other than a person described in subsection (b)(8), (b)(9), (b)(10),
- 34 or (b)(11), shall provide to the closing agent in the transaction the
- 35 person's:
- 36 (1) legal name; and
- 37 (2) license number, certificate number, registration number, or
- 38 NAIC code, as appropriate;
- 39 to allow the closing agent to comply with subsection (c)(2)(B). In the
- 40 case of a transaction described in subsection (a)(1), the person
- 41 described in subsection (b)(7) shall, with the cooperation of any person
- 42 involved in the transaction and described in subsection (b)(6)(A) or



(b)(6)(B), provide the information described in subsection (b)(6). In the case of a transaction described in subsection (a)(1)(A)(ii), the person described in subsection (b)(7) shall also provide the information described in subsection (b)(11). A person described in subsection (b)(3)(B) who is involved in the transaction may provide the information required by this subsection for a person described in subsection (b)(3)(A) that serves as the broker company for the person described in subsection (b)(3)(B). The closing agent shall determine the information described in subsection (b)(8), (b)(9), and (b)(10) from the HUD-1 settlement statement, or in the case of a transaction described in subsection (a)(2), from the contract or any other document executed by the parties in connection with the transaction.

(e) The closing agent in a transaction to which this section applies shall submit the information described in subsection (d) to the data base described in subsection (c)(2)(D) not later than twenty (20) business days after the date of closing or the date of disbursement, whichever is later.

~~(e)~~ **(f)** Except for a person described in subsection (b)(8), (b)(9), (b)(10), or (b)(11), a person described in subsection (b) who fails to comply with subsection (d) **or (e)** is subject to a civil penalty of one hundred dollars (\$100) for each closing with respect to which the person fails to comply with subsection (d) **or (e)**. The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the person in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

~~(f)~~ **(g)** Subject to subsection ~~(g)~~, **(h)**, the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

(1) each entity described in IC 4-6-12-4; and

(2) the homeowner protection unit established under IC 4-6-12-2.

~~(g)~~ **(h)** The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

(1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and

(2) contained in the data base described in subsection (c)(2)(D); except to the extent required or authorized by state or federal law.

~~(h)~~ **(i)** The department may adopt rules under IC 4-22-2, including



emergency rules under IC 4-22-2-37.1, to implement this section. Rules adopted by the department under this subsection may establish procedures for the department to:

- (1) establish;
- (2) collect; and
- (3) change as necessary;

an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section.

~~(h)~~ **(j)** If the department adopts a rule under IC 4-22-2 to establish an administrative fee to cover the department's expenses in establishing and maintaining the electronic system required by this section, as allowed under subsection ~~(h)~~, **(i)**, the department may:

- (1) require the fee to be paid:
 - (A) to the closing agent responsible for inputting the information and submitting the form described in subsection (c)(2); and
 - (B) by the borrower, the seller, or the buyer in the transaction;
- (2) allow the closing agent described in subdivision (1)(A) to retain a part of the fee collected to cover the closing agent's costs in inputting the information and submitting the form described in subsection (c)(2); and
- (3) require the closing agent to pay the remainder of the fee collected to the department for deposit in the title insurance enforcement fund established by IC 27-7-3.6-1, for the department's use in establishing and maintaining the electronic system required by this section.

SECTION 14. IC 27-7-3.7-4, AS ADDED BY P.L.92-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. As used in this chapter, "good funds" means funds in any of the following forms:

- (1) United States currency.
- (2) Wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent.
- (3) Certified or cashier's checks that are drawn on an existing account at a:
 - (A) bank;
 - (B) savings and loan association;
 - (C) credit union; or
 - (D) savings bank;
 chartered under the laws of a state or the United States.
- (4) A check drawn on the trust account of a real estate broker licensed under IC 25-34.1, if the closing agent has reasonable and



prudent grounds to believe that sufficient funds will be available for withdrawal from the account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow account.

(5) A personal check not to exceed five hundred dollars (\$500) per closing.

(6) A check issued by the state, the United States, or a political subdivision of the state or the United States.

(7) A check drawn on the escrow account of another closing agent, if the closing agent in the escrow transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the escrow transaction.

(8) A check issued by a farm credit service authorized under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(9) A check that is deposited and held in the escrow account of the closing agent for at least fourteen (14) days before the date of closing.

SECTION 15. IC 27-7-3.7-7, AS ADDED BY P.L.92-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless any funds that:

(1) are received from any single party to the real estate transaction; and

(2) in the aggregate are at least ten thousand dollars (\$10,000); are wired funds that are unconditionally held by and irrevocably credited to the escrow account of the closing agent **or are good funds described in section 4(9) of this chapter.**

SECTION 16. IC 27-8-15-14, AS AMENDED BY P.L.146-2015, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 14. (a) **This subsection applies only with respect to grandfathered health plan coverage described in 45 CFR 147.140.** As used in this chapter, "small employer" means any person, firm, corporation, limited liability company, partnership, or association actively engaged in business who, on at least fifty percent (50%) of the working days of the employer during the preceding calendar year, employed at least two (2) but not more than fifty (50) eligible employees, the majority of whom work in Indiana. In determining the number of eligible employees, companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state



1 taxation are considered one (1) employer.

2 (b) If the commissioner of insurance determines that it is necessary
3 or appropriate, the department of insurance may adopt emergency rules
4 under IC 4-22-2-37.1 to conform the definition set forth in subsection
5 (a) with PPACA (as defined in IC 27-19-2-14). Notwithstanding
6 IC 4-22-2-37.1(g), an emergency rule adopted under this subsection
7 expires on the date occurring one (1) year after the date on which the
8 emergency rule takes effect. **This subsection expires January 1, 2017.**

9 (c) **This subsection applies only with respect to a health**
10 **insurance plan that does not provide grandfathered health plan**
11 **coverage described in 45 CFR 147.140. As used in this chapter,**
12 **"small employer" means any person, firm, corporation, limited**
13 **liability company, partnership, or association actively engaged in**
14 **business who, on at least fifty percent (50%) of the working days**
15 **of the employer during the preceding calendar year, employed at**
16 **least one (1) but not more than fifty (50) employees. In determining**
17 **the number of employees, companies that are treated as a single**
18 **employer under Section 414(b), 414(c), 414(m), or 414(o) of the**
19 **Internal Revenue Code are treated as one (1) employer.**

20 SECTION 17. IC 27-8-29-15, AS AMENDED BY P.L.81-2012,
21 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2016]: Sec. 15. (a) An independent review organization shall:

23 (1) for an expedited external grievance filed under section
24 13(a)(2)(A) of this chapter, within seventy-two (72) hours after
25 the external grievance is filed; or

26 (2) for a standard external grievance filed under section
27 13(a)(2)(B) of this chapter, within fifteen (15) business days after
28 the external grievance is filed;

29 make a determination to uphold or reverse the insurer's appeal
30 resolution under IC 27-8-28-17 based on information gathered from the
31 covered individual or the covered individual's designee, the insurer,
32 and the treating health care provider, and any additional information
33 that the independent review organization considers necessary and
34 appropriate.

35 (b) When making the determination under this section, the
36 independent review organization shall apply:

37 (1) standards of decision making that are based on objective
38 clinical evidence; and

39 (2) the terms of the covered individual's accident and sickness
40 insurance policy.

41 (c) In an external grievance described in section 12(1)(D) of this
42 chapter, the insurer bears the burden of proving that the insurer



properly denied coverage for a condition, complication, service, or treatment because the condition, complication, service, or treatment is directly related to a condition for which coverage has been waived under IC 27-8-5-2.5(e) (expired July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1, 2007, and repealed).

(d) The independent review organization shall notify the insurer and the covered individual of the determination made under this section:

(1) for an expedited external grievance filed under section 13(a)(2)(A) of this chapter, within ~~twenty-four (24)~~ **seventy-two (72)** hours after ~~making the determination~~; **external grievance is filed**; and

(2) for a standard external grievance filed under section 13(a)(2)(B) of this chapter, within seventy-two (72) hours after making the determination.

SECTION 18. IC 27-9-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. As used in IC 27-9:

(a) "Ancillary state" means any state other than a domiciliary state.

(b) **"Collateral", for purposes of IC 27-9-3-34.5, means cash, a letter of credit, a surety bond, or another form of security posted by an insured, a captive insurer, or reinsurer, to secure the insured's obligation to:**

(1) **pay deductible claims or to reimburse the insurer for deductible claim payments under a large deductible policy; or**

(2) **reimburse or pay the insurer as required for other secured obligations.**

(c) **"Commercially reasonable" means:**

(1) **acting in good faith according to prevailing industry practices; and**

(2) **making all reasonable efforts considering the facts and circumstances of a matter.**

~~(b)~~ (d) "Commissioner" refers to the insurance commissioner.

~~(c)~~ (e) "Creditor" means a person having a claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.

(f) **"Deductible claim" means a claim under a large deductible policy that does not exceed the deductible. The term includes a claim for loss, defense, and (unless excluded) cost containment expense.**

~~(d)~~ (g) "Delinquency proceeding" means:

(1) any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving that insurer; and



- (2) any summary proceeding under IC 27-9-2-1 or IC 27-9-2-2.
- ~~(e)~~ **(h)** "Doing business" includes the following acts, whether effected by mail or otherwise:
- (1) The issuance or delivery of contracts of insurance to persons resident in Indiana.
 - (2) The solicitation of applications for contracts or other negotiations preliminary to the execution of contracts.
 - (3) The collection of premiums, membership fees, assessments, or other consideration for contracts.
 - (4) The transaction of matters subsequent to execution of contracts and arising out of them.
 - (5) Operating under a license or certificate of authority, as an insurer, issued by the insurance department.
- ~~(f)~~ **(i)** "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.
- ~~(g)~~ **(j)** "Fair consideration" is given for property or obligation:
- (1) when in exchange for that property or obligation, as a fair equivalent for it, and in good faith, property is conveyed or services are provided or an obligation is incurred or an antecedent debt is satisfied; or
 - (2) when that property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.
- ~~(h)~~ **(k)** "Foreign guaranty association" refers to a guaranty association similar to those listed in subsection ~~(k)~~ **(n)** established in any state.
- ~~(i)~~ **(l)** "Formal delinquency hearing" means any liquidation or rehabilitation proceeding.
- ~~(j)~~ **(m)** "General assets" means all property not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured by that property. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.
- ~~(k)~~ **(n)** "Guaranty association" includes an association established under:
- (1) IC 27-6-8, the insurance guaranty association law; or



- (2) IC 27-8-8, the life and health guaranty association law.
- ~~(h)~~ (o) "Insolvency" or "insolvent" means:
- (1) for an insurer issuing only assessable fire insurance policies:
 - (A) the inability of the insurer to pay any obligation within thirty (30) days after it becomes payable; or
 - (B) if an assessment be made within thirty (30) days after the date an obligation becomes payable, the inability of the insurer to pay that obligation thirty (30) days following the date specified in the first assessment notice issued after the date of loss; and
 - (2) for all other insurers when:
 - (A) the insurer is unable to pay its obligations when they are due; or
 - (B) the insurer's admitted assets do not exceed its liabilities, plus the greater of:
 - (i) any capital and surplus required by law for its organization; or
 - (ii) the total par or stated value of its authorized and issued capital stock.

For purposes of this subsection, "liabilities" include reserves required by law or by regulation.

~~(m)~~ (p) "Insurer" means any person who:

- (1) has done, purports to do, is doing, or is licensed to do insurance business; and
- (2) is subject to the authority of any insurance commissioner as to liquidation, rehabilitation, reorganization, supervision, or conservation.

For purposes of IC 27-9, other persons included under section 1 of this chapter shall be considered to be insurers.

(q) "Large deductible policy" means a combination of worker's compensation policies or endorsements, or both, issued to an insured and contracts or security agreements entered into between the insured and insurer in which the insured has agreed to pay directly, or reimburse the insurer for the insurer's payment of, the:

- (1) initial part of a claim under the policy; or**
- (2) expenses related to a claim;**

up to a specified dollar amount. The term includes a policy that contains, in addition to a per claim limit, an aggregate limit on the insured's liability for all deductible claims. The term also includes a policy with a deductible of at least fifty thousand dollars (\$50,000). The term does not include a policy, an endorsement, or an agreement under which the initial part of a claim is self-insured



1 and the insurer is not obligated to pay any part of the self-insured
 2 retention. The term also does not include a policy that provides for
 3 retrospectively rated premium payments or a reinsurance
 4 agreement, except to the extent that a reinsurance agreement
 5 assumes, secures, or pays the insured's large deductible obligations.

6 (r) "Other secured obligations", for purposes of IC 27-9-3-34.5,
 7 means obligations of an insured to an insurer other than
 8 obligations under a large deductible policy. The term includes
 9 obligations under a reinsurance agreement or another agreement
 10 that involves retrospective premium obligations the performance
 11 of which is secured by collateral that also secures an insured's
 12 obligations under a large deductible policy.

13 ~~(n)~~ (s) "Preferred claim" means any claim with respect to which the
 14 terms of IC 27-9 accord priority of payment from the general assets of
 15 the insurer.

16 ~~(o)~~ (t) "Receiver" includes liquidator, rehabilitator, or conservator.

17 ~~(p)~~ (u) "Reciprocal state" means any state other than Indiana in
 18 which:

19 (1) in substance and effect IC 27-9-3-7(a), IC 27-9-4-3,

20 IC 27-9-4-4, and IC 27-9-4-6 through IC 27-9-4-8 are in force;

21 (2) provisions are in force requiring that the commissioner (or
 22 equivalent official) be the receiver of a delinquent insurer; and

23 (3) some provision exists for the avoidance of fraudulent
 24 conveyances and preferential transfers.

25 ~~(q)~~ (v) "Secured claim" means any claim secured by mortgage, trust
 26 deed, pledge, deposit as security, escrow, or otherwise, but not
 27 including special deposit claims or claims against general assets. The
 28 term also includes claims which have become liens upon specific assets
 29 by reason of judicial process.

30 ~~(r)~~ (w) "Special deposit claim" means any claim secured by a
 31 deposit made under law for the security or benefit of a limited class or
 32 classes of persons, but not including any claim secured by general
 33 assets.

34 ~~(s)~~ (x) "State" includes the District of Columbia and all other
 35 territories of the United States.

36 ~~(t)~~ (y) "Transfer" includes all methods of disposing with any interest
 37 in property or with the possession of that property, or of fixing a lien
 38 upon property, or upon an interest in property, absolutely or
 39 conditionally, voluntarily, by or without judicial proceedings. The
 40 retention of a security title to property delivered to a debtor shall be
 41 considered a transfer made by the debtor.

42 SECTION 19. IC 27-9-3-3 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) The
 2 commissioner, as rehabilitator, may appoint one (1) or more special
 3 deputies, who shall have all the powers and responsibilities of the
 4 rehabilitator granted under this section. Also, the commissioner may
 5 employ such counsel, clerks, and assistants as he considers necessary.

6 (b) With the approval of the court, the compensation of the special
 7 deputy, counsel, clerks, and assistants and all expenses of taking
 8 possession of the insurer and of conducting the proceedings shall be:

9 (1) fixed by the commissioner; and

10 (2) paid out of the funds or assets of the insurer.

11 (c) The persons appointed under this section shall serve at the
 12 pleasure of the commissioner.

13 (d) In the event that the property of the insurer does not contain
 14 sufficient cash or liquid assets to defray the costs incurred, the
 15 commissioner may advance the costs so incurred out of any
 16 appropriation for the maintenance of the insurance department. Any
 17 amounts so advanced for expenses of administration shall be repaid to
 18 the commissioner for the use of the insurance department out of the
 19 first available money of the insurer.

20 (e) The rehabilitator may take such action as he considers necessary
 21 or appropriate to reform and revitalize the insurer. The commissioner:

22 (1) has all the powers of the directors, officers, and managers,
 23 whose authority shall be suspended, except as they are
 24 redelegated by the rehabilitator;

25 (2) may direct, manage, hire, and discharge employees subject to
 26 any contract rights they may have; and

27 (3) may deal with the property and business of the insurer.

28 (f) The rehabilitator may prosecute any action that exists in behalf
 29 of the creditors, members, policyholders, or shareholders of the insurer
 30 against any director or officer of the insurer or any other person or
 31 entity.

32 **(g) The rehabilitator may pursue insurance proceeds for the**
 33 **negligent, reckless, or fraudulent actions or omissions of the**
 34 **officers and directors of the insurer. An act or omission of an**
 35 **officer or director of the insurer during the eighteen (18) months**
 36 **immediately preceding the date on which an order of rehabilitation**
 37 **is entered may not be used to avoid coverage or other duties under**
 38 **a policy of insurance covering directors' and officers' liability.**

39 ~~(g)~~ **(h)** If the rehabilitator determines that reorganization,
 40 consolidation, conversion, reinsurance, merger, or other transformation
 41 of the insurer is appropriate, he shall prepare a plan to effect those
 42 changes.



1 ~~(h)~~ (i) Upon application of the rehabilitator for approval of the plan,
 2 and after such notice and hearings as the Marion County circuit court
 3 may prescribe, the court may either approve or disapprove the plan
 4 proposed, or may modify it and approve it as modified. Any plan
 5 approved under this section must be, in the judgment of the court, fair
 6 and equitable to all parties concerned. If the plan is approved, the
 7 rehabilitator shall carry out the plan.

8 ~~(i)~~ (j) In the case of the life insurer, the plan proposed may include
 9 the imposition of liens upon the policies of company, if all rights of
 10 shareholders are first relinquished. A plan for a life insurer may also
 11 propose imposition of a moratorium upon loan and cash surrender
 12 rights under policies, for such period and to such an extent as may be
 13 necessary.

14 SECTION 20. IC 27-9-3-9 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) The
 16 commissioner may petition for an order dissolving the corporate
 17 existence of a domestic insurer, or the United States branch of an alien
 18 insurer domiciled in Indiana, at the time the commissioner applies for
 19 a liquidation order. The Marion County circuit court shall order
 20 dissolution of the corporation upon petition by the commissioner upon
 21 or after the granting of a liquidation order. If the dissolution has not
 22 previously been ordered, the dissolution shall be effected by operation
 23 of law upon the discharge of the liquidator if the insurer is insolvent
 24 but may be ordered by the court upon the discharge of the liquidator if
 25 the insurer is under a liquidation order for some other reason.

26 (b) The liquidator may do all acts necessary or appropriate for the
 27 accomplishment of the liquidation, including the following:

28 (1) Appoint a special deputy to act for the liquidator under this
 29 article, and determine a reasonable compensation for that special
 30 deputy.

31 (2) Employ employees and insurance producers, legal counsel,
 32 actuaries, accountants, appraisers, consultants, and other
 33 personnel as the liquidator considers necessary to assist in the
 34 liquidation.

35 (3) Fix the reasonable compensation of employees and insurance
 36 producers, legal counsel, actuaries, accountants, appraisers, and
 37 consultants with the approval of the court.

38 (4) Pay reasonable compensation to persons appointed and defray
 39 from the funds or assets of the insurer all expenses of taking
 40 possession of, conserving, conducting, liquidating, disposing of,
 41 or otherwise dealing with the business and property of the insurer.

42 (5) Hold hearings, subpoena witnesses to compel their attendance,



1 administer oaths, examine any person under oath, and compel any
 2 person to subscribe to the person's testimony after it has been
 3 correctly reduced to writing, and in connection with hearings and
 4 the examination of witnesses require the production of any books,
 5 papers, records, or other documents which the liquidator deems
 6 relevant to the inquiry.

7 (6) Collect all debts and moneys due and claims belonging to the
 8 insurer, wherever located, and for this purpose:

9 (A) institute timely action in other jurisdictions, in order to
 10 forestall garnishment and attachment proceedings against
 11 those debts;

12 (B) do other acts necessary or expedient to collect, conserve,
 13 or protect its assets or property, including the power to sell,
 14 compound, compromise, or assign debts for purposes of
 15 collection upon terms and conditions as the liquidator
 16 considers best; and

17 (C) pursue any creditor's remedies available to enforce the
 18 liquidator's claims.

19 (7) Conduct public and private sales of the property of the insurer.

20 (8) Use assets of the estate of an insurer under a liquidation order
 21 to transfer policy obligations to a solvent assuming insurer, if the
 22 transfer can be arranged without prejudice to applicable priorities
 23 under section 40 of this chapter.

24 (9) Acquire, hypothecate, encumber, lease, improve, sell, transfer,
 25 abandon, or otherwise dispose of or deal with, any property of the
 26 insurer at its market value or upon such terms and conditions as
 27 are fair and reasonable.

28 (10) Borrow money on the security of the insurer's assets or
 29 without security and execute and deliver all documents necessary
 30 to that transaction for the purpose of facilitating the liquidation.

31 (11) Enter into contracts that are necessary to carry out the order
 32 to liquidate, and affirm or disavow any contracts to which the
 33 insurer is a party.

34 (12) Continue to prosecute and to institute in the name of the
 35 insurer, or in the liquidator's own name, all suits and other legal
 36 proceedings, in Indiana or elsewhere, and abandon the
 37 prosecution of claims the liquidator considers unprofitable to
 38 pursue further.

39 (13) Prosecute any action that may exist in behalf of the creditors,
 40 members, policyholders, or shareholders of the insurer against any
 41 director or officer of the insurer, or any other person.

42 **(14) Pursue insurance proceeds for the negligent, reckless, or**



1 **fraudulent actions or omissions of the officers and directors**
 2 **of the insurer. An act or omission of an officer or director of**
 3 **the insurer during the eighteen (18) months immediately**
 4 **preceding the date on which petition for liquidation is filed**
 5 **may not be used to avoid coverage or other duties under a**
 6 **policy of insurance covering directors' and officers' liability.**

7 ~~(14)~~ **(15)** Remove all records and property of the insurer to the
 8 offices of the commissioner or to some other place as may be
 9 convenient for the purposes of efficient and orderly execution of
 10 the liquidation.

11 ~~(15)~~ **(16)** Deposit in one (1) or more banks in Indiana sums
 12 required for meeting current administration expenses and
 13 dividend distributions.

14 ~~(16)~~ **(17)** Invest all sums not currently needed, unless the court
 15 orders otherwise.

16 ~~(17)~~ **(18)** File any necessary documents for record in the office of
 17 any recorder of deeds or record office in Indiana or elsewhere
 18 where property of the insurer is located.

19 ~~(18)~~ **(19)** Assert all defenses available to the insurer as against
 20 third persons, including statutes of limitation, statutes of frauds,
 21 and the defense of usury.

22 ~~(19)~~ **(20)** Exercise and enforce all the rights, remedies, and
 23 powers of any creditor, shareholder, policyholder, or member,
 24 including any power to avoid any transfer or lien that may be
 25 given by the general law and that is not included in sections 14
 26 through 16 of this chapter.

27 ~~(20)~~ **(21)** Intervene in any proceeding wherever instituted that
 28 might lead to the appointment of a receiver or trustee, and act as
 29 the receiver or trustee whenever the appointment is offered.

30 ~~(21)~~ **(22)** Enter into agreements with any receiver or
 31 commissioner of any other state relating to the rehabilitation,
 32 liquidation, conservation, or dissolution of an insurer doing
 33 business in both states.

34 ~~(22)~~ **(23)** Exercise all powers conferred upon receivers by the
 35 laws of Indiana not inconsistent with this article.

36 SECTION 21. IC 27-9-3-34.5 IS ADDED TO THE INDIANA
 37 CODE AS A NEW SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2016]: **Sec. 34.5. (a) This section:**

39 **(1) applies to a worker's compensation large deductible policy**
 40 **issued by an insurer that is subject to this chapter; and**

41 **(2) does not apply to first party claims or claims funded by the**
 42 **guaranty association net of the deductible.**



1 (b) To the extent that the terms of a large deductible policy
 2 conflict with this section, the policy must be administered in
 3 accordance with this section.

4 (c) Unless otherwise agreed by the guaranty association, all
 5 deductible claims that are covered claims (as defined in
 6 IC 27-6-8-4), including claims funded by an insured before
 7 liquidation, must be referred to the guaranty association for
 8 processing. To the extent an insured funds or pays a deductible
 9 claim under an agreement with the guaranty association or
 10 otherwise, the insured's funding or payment of the deductible claim
 11 extinguishes any obligation of the receiver or the guaranty
 12 association to pay the claim. A charge may not be made against the
 13 receiver or the guaranty association on the basis of an insured's
 14 funding or payment of a deductible claim.

15 (d) The following apply when the guaranty association pays a
 16 deductible claim:

17 (1) If the guaranty association pays a deductible claim for
 18 which the insurer would have been entitled to reimbursement
 19 from the insured, the guaranty association is entitled to the
 20 full amount of the reimbursement and available collateral to
 21 the extent necessary to reimburse the guaranty association.
 22 Reimbursements paid to the guaranty association under this
 23 subsection are not early access payments under section 32 of
 24 this chapter or distributions under section 40 of this chapter.

25 (2) If the guaranty association pays:

26 (A) a deductible claim that is not reimbursed:

27 (i) from collateral; or

28 (ii) by payment by the insured; or

29 (B) an incurred expense in connection with a large
 30 deductible policy that is not reimbursed;

31 the guaranty association is entitled to assert a claim for the
 32 payments in the delinquency proceeding.

33 (e) Subsection (d) does not limit the receiver's or guaranty
 34 association's rights under other applicable law to obtain
 35 reimbursement from an insured for claim payments made by the
 36 guaranty association:

37 (1) under the policies of the insurer; or

38 (2) for the guaranty association's related expenses;

39 including payments described in IC 27-6-8-11.5 or under another
 40 state's similar law.

41 (f) A receiver shall do the following:

42 (1) Upon receipt by the receiver of notice from the guaranty



association of reimbursable payments for which the guaranty association has not been reimbursed, bill an insured for reimbursement of deductible claims:

- (A) paid by the insurer before the commencement of delinquency proceedings;
- (B) paid by the guaranty association; or
- (C) paid or allowed by the receiver.

(2) If an insured that is billed under subdivision (1) does not make payment within:

- (A) the time specified in the large deductible policy; or
- (B) if no time is specified in the large deductible policy, sixty (60) days after the date of billing;

the receiver shall pursue all commercially reasonable actions to collect the payment.

(g) The following do not relieve an insured from the insured's reimbursement obligation under a large deductible policy and this chapter:

- (1) An insurer's insolvency.
- (2) An insurer's inability to perform the insurer's obligations.
- (3) An allegation of improper processing or payment of a deductible claim, except for gross negligence, by the:
 - (A) insurer;
 - (B) receiver; or
 - (C) guaranty association.

(h) With respect to collateral, the following apply:

- (1) A receiver shall use available collateral to secure:
 - (A) an insured's obligation to fund or reimburse deductible claims; and
 - (B) other secured obligations or payment obligations.

The guaranty association is entitled to collateral to the extent needed to reimburse the guaranty association for the guaranty association's payment of a deductible claim. A distribution to the guaranty association under this subdivision is not an early access payment under section 32 of this chapter or a distribution under section 40 of this chapter.

(2) A receiver shall pay all claims against collateral in the order received, and a claim of the receiver, including claims described in this subsection, does not supersede any other claim against the collateral as described in subdivision (4).

(3) A receiver shall draw down collateral to the extent necessary if the insured fails to do any of the following:

- (A) Perform the insured's funding or payment obligations



- 1 under the large deductible policy.
- 2 (B) Pay a deductible claim reimbursement within the time
- 3 specified in subsection (f)(2).
- 4 (C) Pay amounts due to the insurer estate for
- 5 pre-liquidation obligations.
- 6 (D) Fund any other secured obligation within:
- 7 (i) the time specified in the large deductible policy; or
- 8 (ii) another reasonable period.
- 9 (E) Pay expenses within the time specified in subsection
- 10 (f)(2).
- 11 (4) A receiver shall pay all claims that are validly asserted
- 12 against the collateral in the order in which the claims are
- 13 received by the receiver.
- 14 (5) A receiver shall return to an insured any excess collateral,
- 15 as determined by the receiver after a periodic review of
- 16 claims paid, outstanding case reserves, and a factor for
- 17 incurred but not reported claims.
- 18 SECTION 22. IC 27-13-10.1-4 IS AMENDED TO READ AS
- 19 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) An independent
- 20 review organization shall:
- 21 (1) for an expedited appeal filed under section 2(a)(2)(A) of this
- 22 chapter, within seventy-two (72) hours after the appeal is filed; or
- 23 (2) for a standard appeal filed under section 2(a)(2)(B) of this
- 24 chapter, within fifteen (15) business days after the appeal is filed;
- 25 make a determination to uphold or reverse the health maintenance
- 26 organization's grievance resolution under IC 27-13-10-8 based on
- 27 information gathered from the enrollee or the enrollee's designee, the
- 28 health maintenance organization, and the treating physician, and any
- 29 additional information that the independent review organization
- 30 considers necessary and appropriate.
- 31 (b) When making the determination under this section, the
- 32 independent review organization shall apply:
- 33 (1) standards of decision making that are based on objective
- 34 clinical evidence; and
- 35 (2) the terms of the enrollee's benefit contract.
- 36 (c) The independent review organization shall notify the health
- 37 maintenance organization and the enrollee of the determination made
- 38 under this section:
- 39 (1) for an expedited appeal filed under section 2(a)(2)(A) of this
- 40 chapter, within ~~twenty-four (24)~~ **seventy-two (72)** hours after
- 41 ~~making the determination;~~ **appeal is filed;** or
- 42 (2) for a standard appeal filed under section 2(a)(2)(B) of this



chapter, within seventy-two (72) hours after making the determination.

SECTION 23. IC 27-15-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) If a domestic mutual insurance company:

- (1) is insolvent, as defined in ~~IC 27-9-1-2(f)~~; **IC 27-9-1-2(o)**;
- (2) does not meet the minimum surplus requirements of IC 27-1-6-15; or
- (3) in the judgment of the commissioner, is in a hazardous financial condition;

its board of directors may adopt, and the commissioner may approve, any plan of conversion and amendment to the articles of incorporation that, on the effective date of the conversion, would provide for the former mutual to have paid-in capital stock and surplus in an amount not less than the minimum requirements of IC 27-1-6-14(c) and IC 27-1-6-14(e) and an RBC level greater than its company action RBC level.

(b) The commissioner may allow waivers or material modifications of the requirement to give any notices to members and policyholders, to obtain member approval of the proposed plan of conversion or amendment to the articles of incorporation of the converting mutual, or to distribute consideration to members if the value of a converting mutual described in subsection (a) does not in the judgment of the commissioner warrant any such notices, approvals, or distribution under the circumstances, including the expenses involved in a distribution of consideration.

SECTION 24. IC 35-52-27-9.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 9.3. IC 27-1-23-8.1 defines a crime concerning the department of insurance.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1136, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 18, delete lines 30 through 42.

Delete page 19.

Page 20, delete lines 1 through 7.

Page 20, line 8, reset in roman "(j)".

Page 20, line 8, delete "(p)".

Page 23, line 23, delete "commission" and insert "**commissioner**".

Page 25, line 32, delete "Level 6 felony (IC 35-50-2-7):" and insert "**Class A misdemeanor (IC 35-50-3-2):**".

Page 26, line 5, delete "Level 4 felony (IC 35-50-2-5.5):" and insert "**Class A misdemeanor (IC 35-50-3-2):**".

Page 27, line 17, delete "a licensure" and insert "**licensure**".

Page 33, between lines 7 and 8, begin a new paragraph and insert:
"SECTION 15. IC 27-7-3.7-4, AS ADDED BY P.L.92-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. As used in this chapter, "good funds" means funds in any of the following forms:

- (1) United States currency.
- (2) Wired funds unconditionally held by and irrevocably credited to the escrow account of the closing agent.
- (3) Certified or cashier's checks that are drawn on an existing account at a:
 - (A) bank;
 - (B) savings and loan association;
 - (C) credit union; or
 - (D) savings bank;
 chartered under the laws of a state or the United States.
- (4) A check drawn on the trust account of a real estate broker licensed under IC 25-34.1, if the closing agent has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account on which the check is drawn at the time of disbursement of funds from the closing agent's escrow account.
- (5) A personal check not to exceed five hundred dollars (\$500) per closing.
- (6) A check issued by the state, the United States, or a political subdivision of the state or the United States.



(7) A check drawn on the escrow account of another closing agent, if the closing agent in the escrow transaction has reasonable and prudent grounds to believe that sufficient funds will be available for withdrawal from the account upon which the check is drawn at the time of disbursement of funds from the escrow account of the closing agent in the escrow transaction.

(8) A check issued by a farm credit service authorized under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(9) A check that is deposited and held in the escrow account of the closing agent for at least fourteen (14) days before the date of closing.

SECTION 16. IC 27-7-3.7-7, AS ADDED BY P.L.92-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. A closing agent may not make disbursements from an escrow account in connection with a real estate transaction unless any funds that:

(1) are received from any single party to the real estate transaction; and

(2) in the aggregate are at least ten thousand dollars (\$10,000); are wired funds that are unconditionally held by and irrevocably credited to the escrow account of the closing agent **or are good funds described in section 4(9) of this chapter.**"

Page 33, line 36, delete "affiliated companies" and insert "**treated as a single employer under Section 414(b), 414(c), 414(m), or 414(o) of the Internal Revenue Code are treated as**".

Page 33, delete line 37.

Page 33, line 38, delete "state taxation are considered".

Page 34, line 37, after ""Collateral"" insert ", **for purposes of IC 27-9-3-34.5,**".

Page 37, line 24, after "obligations"" insert ", **for purposes of IC 27-9-3-34.5,**".

Page 39, line 14, delete "." and insert "**covering directors' and officers' liability.**".

Page 41, line 24, delete "." and insert "**covering directors' and officers' liability.**".



Page 44, line 24, delete "the time" and insert ":

(i) the time specified in the large deductible policy; or

(ii) another reasonable period."

Page 44, delete line 25.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1136 as introduced.)

CARBAUGH

Committee Vote: yeas 9, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1136 be amended to read as follows:

Page 26, delete lines 9 through 42.

Page 27, delete lines 1 through 11.

Renumber all SECTIONS consecutively.

(Reference is to HB 1136 as printed January 22, 2016.)

LEHMAN

